EDEN WONDERLAND SDN BHD & ORS v. THE COLLECTOR OF STAMP DUTY INLAND REVENUE BOARD

HIGH COURT SABAH & SARAWAK, KUCHING
FARIDZ GOHIM ABDULLAH JC
[JUDICIAL REVIEW NO: KCH-25-15-9-2023]
7 AUGUST 2024

Abstract – *In determining whether the pre-amended or post-amended s. 57(a) of the Stamp Act 1949 ('Act') was applicable to an application for a refund of a stamp duty paid ('refund application'), the date that ought to be considered is the date when the refund application was made, and not the date when the relevant instruments, ie, the sale and purchase agreement, was entered into. If the refund application was made after 1 January 2022, then the applicable provision is the post-amended s. 57(a) of the Act.*

ADMINISTRATIVE LAW: *Judicial review – Application for – To reverse decision of Collector of Stamp Duty ('Collector') which rejected applications for refund of stamp duties paid due to spoiled stamps ('refund applications') – Whether Collector erred in its decision – Whether judicial review application filed within three months period under O. 53 r. 3(6) of Rules of Court 2012 – Whether refund applications fell within provision of amended s. 57(a) of Stamp Act 1949 – Whether in rejecting refund applications, Collector had misconceived applicable and enforceable law at material time*

REVENUE LAW: *Stamp duty – Allowance for spoiled stamps – Application for refund – Terms and conditions under s. 57(a) of Stamp Act 1949 – Whether satisfied – Whether Collector of Stamp Duty bound to refund spoiled stamps*

The applicants (including the buyer and seller) were the parties in a sale and purchase transaction of four parcels of vacant land ('land'). Meanwhile, the respondent was the Collector of Stamp Duty. For effecting the said transaction, the applicants had entered into four sale and purchase agreements, 15 memorandum of transfers and four supplementary deeds ('instruments'). The instruments, respectively, were dated 30 April 2021, 20 May 2021 and 15 November 2021. The applicants, thereafter, *vide* 23 stamp duty certificates, paid to the respondent stamp duties in the amount of RM156,620. After the said payment, the COVID-19 pandemic began. As a result, the said transaction had to be aborted as the buyer in the said transaction was facing difficulty in securing financing for completing the transaction. Therefore, on 30 January 2023, the applicants entered into four deeds of mutual rescission dated 23 January 2023 ('deeds') to cancel, rescind and annul the instruments. Pursuant to the rescission, while alleging that the

stamp duties paid had become spoiled under s. 57(f)(vi) of the Stamp Act 1949 ('Act'), the applicants, on three different dates, *ie*, 10, 14 and 15 March 2023, applied to the respondent for a refund of the stamp duties paid ('refund applications'). However, on 30 June 2023, the refund applications were rejected by the respondent on the ground that terms and conditions under ss. 21(7), 57, 58, 80(3) of the Act had not been satisfied ('respondent's decision'). Aggrieved, the applicants filed the present judicial review application, among others, to reverse the respondent's decision ('application'). Among the issues raised were: (i) whether the application was in accordance with O. 53 r. 3(6) of the Rules of Court 2012 ('ROC'), in that, it was filed within three months after the date of the respondent's decision; and (ii) Whether in its decision, the respondent had applied the correct law applicable and enforceable at the material time, taking into consideration, among others: (a) at the time the refund applications were filed, the amended s. 57(a) of the Act, which extended the time limit for filing an application for a refund from 12 months to 24 months, was applicable; and (b) whether the refund applications had satisfied the terms and conditions under s. 57(a) of the Act.

Held (dismissing application):

(1) Leave to apply for the application had been granted on 30 October 2023. The court had considered the preliminary issue raised whether the application, which was for judicial review, was filed within or outside the time limit of three months as required under O. 53 r. 3(6) of the ROC. The said issue had been considered by the High Court Judge at the leave stage before leave was granted. The Attorney General's Chambers, *vide* a letter to the court dated 7 October 2023, had also not objected to the leave application. Hence, there should be no issue regarding the compliance with O. 53 r. 3(6) of the ROC. (para 37)

(2) The refund applications were made by the applicants on 11, 14 and 15 March 2023, which were dates after the coming into force of the amended s. 57(a) of the Act, *ie*, 1 January 2022. Considering that the refund applications fell under the amended s. 57(a) of the Act, the extended period of 24 months for the filing of the refund applications was applicable. There should be no issue of whether the amended s. 57(a) of the Act should apply prospectively or retrospectively. (paras 52-53 & 58-59)

(3) Based on s. 57(a) of the Act, an application for a refund can only be made after the stamp is spoiled due to the various circumstances mentioned under s. 57(a) until (f) of the Act. In this case, the stamps had been spoiled pursuant to s. 57(f)(vi) of the Act when the applicants decided to rescind the instrument by entering the deeds dated 23 January 2023. After the rescission, the applicants filed for the refund on 10, 14 and 15 March 2023, which were rejected by the applicants. Since the

applicants, in filing the refund applications, had satisfied the terms and conditions under s. 57(a) of the Act by, among others: (i) the applicants had made the refund applications; (ii) the stamps were spoiled stamps; and (iii) the refund applications were made within the 24 months period, the respondent was duty-bound to refund the spoiled stamps to the applicants. By grounding on the wrong application of the law applicable and enforceable at the material time, the respondent had rejected the refund applications. The application was therefore allowed. (paras 46, 52, 60-62, 64 & 76)

Case(s) referred to:
Council of Civil Service Unions v. Minister For The Civil Service [1985] AC 374 ***(refd)***
Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor [2017] 2 CLJ 1 FC ***(refd)***
Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 SC ***(refd)***
OSM Marketing (KK) Sdn Bhd v. The Collector Of Stamp Duties, Malaysia [2024] 6 CLJ 920 HC ***(dist)***
Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal [2019] 4 CLJ 561 FC ***(refd)***
R v. Panel On Take-Overs And Mergers, Ex Parte Datafin Plc [1987] QB 815 ***(refd)***

Legislation referred to:
Finance Act 2021, ss. 36, 40
Rules of Court 2012, O. 53 r. 3(6)
Stamp Act 1949, ss. 2(b), (c), (d), (e), 21(7), 57(a), (f)(i), (ii), (iii), (iv)(a), (v), (vi), 58, 80(3)

For the applicants - Tony Ling & Daniel Lee; M/s HC Lee & Partners
For the respondent - Mohammad Hafidz Ahmad; SRC

Reported by Syamim Ariffin

JUDGMENT
(encl. 1)

Faridz Gohim Abdullah JC:

Introduction

[1] This is the applicants' application for judicial review against the decision of the respondent ('decision') rejecting the applicants' application for a refund of the stamp duty paid under the Stamp Act 1949.

[2] Having considered the application, the affidavits filed and the written submissions of both parties, this court has allowed the applicants' application for reliefs sought as in paras. 2(i), (ii), (iii) and (iv) of the statement with no order as to costs.

[3] The respondent being dissatisfied with the decision has filed an appeal.

[4] Below are the grounds for my decision.

Brief Background Of Facts

[5] Sometime in May to December 2021, the applicants paid the respondent a total sum of RM156,620 as the stamp duties in respect of the sale and purchase agreement of lands, memorandum of transfer and supplementary deed *vide* 23 stamp duty certificate (sijil setem).

[6] However, the sale was not materialised and the said sale and purchase agreement was mutually rescinded *vide* deed of mutual rescission dated 23 January 2023.

[7] The applicants applied for the refund of the stamp duties paid under spoiled stamps through the LHDN Stamp Assessment and Payment System for "Bayaran Balik Duti Setem".

[8] The said application was rejected by the respondent on the basis that the application does not fulfil the terms and conditions required under the provision of ss. 21(7), 57, 58 and 80(3) of the Stamp Act 1949.

[9] The content of the said notification for non-approval is produced herein for ease of reference ("decision"):

> Tuan,
>
> Bayaran Balik Duti Setem
>
> JENIS SURAT CARA: MEMORANDUM OF TRANSFER
>
> Saya dengan hormatnya merujuk kepada permohonan tuan bertarikh 10/03/2023.
>
> Dukacita dimaklumkan permohonan tuan tidak diluluskan kerana:
>
> Dokumen dan alasan yang dikemukakan tidak memenuhi syarat-syarat atau tidak termasuk dalam mana-mana hal keadaan sebagaimana yang ditetapkan di bawah Seksyen 21(7), 57, 58 dan 80(3) Akta Setem 1949.
>
> Sekian terima kasih
>
> "BERKHIDMAT UNTUK NEGARA"
>
> "PEMUNGUT DUTI SETEM LHDNM"
>
> Cetakan ini adalah janaan komputer dan tidak memerlukan tandatangan
>
> "BERSAMA MEMBANGUNKAN NEGARA"

[10] Hence, this application for judicial review was filed against the decision of the respondent.

[11] The applicants prayed for the following reliefs:

(i) an order of declaration that the stamp duties paid under the sijil setem(s) listed in Table A herein below for their respective instruments, (hereinafter referred to as "the instruments") are spoiled

stamps under s. 57(f)(vi) of the Stamp Act 1949 by virtue of four deeds of mutual rescission, all dated 30 January 2023, cancelling, annulling and rescinding all the instruments;

Table A

Item	Sijil Setem No.	Instrument	Amount
1.	Q0400A217193318	Sale and Purchase dated 30/04/2021	RM40.00
2.	Q0400A217193315	Sale and Purchase dated 30/04/2021	RM40.00
3.	Q0400A217193309	Sale and Purchase dated 30/04/2021	RM40.00
4.	Q0400A217193331	Sale and Purchase dated 30/04/2021	RM40.00
5.	Q0400A217896762	Memorandum of Transfer dated 20/05/2021	RM8,780.00
6.	Q0400A218274796	Memorandum of Transfer dated 20/05/2021	RM8,780.00
7.	Q0400A217897116	Memorandum of Transfer dated 20/05/2021	RM8,780.00
8.	Q0400A217896527	Memorandum of Transfer dated 20/05/2021	RM8,780.00
9.	Q0400A217896280	Memorandum of Transfer dated 20/05/2021	RM8,780.00
10.	Q0400A217896280	Memorandum of Transfer dated 20/05/2021	RM8,780.00
11.	Q0400A218274783	Memorandum of Transfer dated 20/05/2021	RM17,780.00
12.	Q0400A217892445	Memorandum of Transfer dated 20/05/2021	RM4,380.00
13.	Q0400A217892120	Memorandum of Transfer dated 20/05/2021	RM4,380.00

14.	Q0400A217890153	Memorandum of Transfer dated 20/05/2021	RM4,380.00
15.	Q0400A217889530	Memorandum of Transfer dated 20/05/2021	RM4,380.00
16.	Q0400A217888414	Memorandum of Transfer dated 20/05/2021	RM4,380.00
17.	Q0400A217888047	Memorandum of Transfer dated 20/05/2021	RM4,380.00
18.	Q0400A217933447	Memorandum of Transfer dated 20/05/2021	RM29,780.00
19.	Q0400A217933406	Memorandum of Transfer dated 20/05/2021	RM29,780.00
20.	Q0400A213914109	Supplementary Deed dated 15/11/2021	RM40.00
21.	Q0400A213914136	Supplementary Deed dated 15/11/2021	RM40.00
22.	Q0400A213914101	Supplementary Deed dated 15/11/2021	RM40.00
23.	Q0400A213914097	Supplementary Deed dated 15/11/2021	RM40.00
	TOTAL		RM156,620.00

(ii) an order of declaration that the time for application for relief for the spoiled stamps under Table A is within 24 months from the date of their respective instruments pursuant to proviso (a) of s. 57 of the Stamp Act 1949 reading together with the Finance Act 2021;

(iii) an order to reverse the decision of the respondent made on 30 June 2023, refusing the refund stamp duties paid under the sijil setem(s) listed in Table A;

(iv) an order that the respondent do refund the stamp duty totalling the sum of RM156,620 paid under the sijil setem(s) to the applicants through its agent, Messrs HC Lee & Partners, Advocates under any of its preferred firm's client account; and

(v) any further consequential orders this Honourable Court may deem fit and just.

[12] The grounds in support of this application are those appearing in the statement and the affidavit in support of John Tie Hieng Kiet, affirmed on 1 September 2023.

[13] The summary of the grounds of the application is as follows:

(i) that the applicants (seller) had entered into four sale and purchase agreements all dated 30 April 2021 (SPA) and 15 memorandum of transfer (MOT) all dated 20 May 2021 to sell all four parcels of vacant land known as Lot 359, Lot 281, Lot 280 and Lot 173 all of Block 8 Pueh Land District to the applicants (buyer) (hereinafter collectively referred to as "the said land");

(ii) pursuant to four supplementary deeds (SD) dated 15 November 2021, the applicants (buyer) were granted an extension of time to make payment of the purchase price;

(iii) that the applicants had paid a total of RM156,620 as stamp duties to the respondent in respect of the instruments relating to the sale of the said land, namely, the four sale and purchase agreements all dated 30 April 2021 and 15 memorandum of transfer all dated 20 May 2021 and four supplementary deeds dated 15 November 2021;

(iv) that by reason of an unexpected extraordinary event caused by COVID-19 pandemic, the applicants (buyer) were unable to secure financing for the purchase of the said land despite the extension of time and the applicants (buyer and seller) mutually agreed to terminate the sale and they entered into four deeds of mutual rescission dated 30 January 2023, to cancel, annul and rescind all the instruments relating to the sale of the said land;

(v) that under the Finance Act 2021, the Parliament has granted an extension of time from 12 months to 24 months for the application for the relief of stamp duties under spoiled stamps;

(vi) that the applicants, on 9 March 2023 and 14 March 2023, made applications for relief to refund the stamp duties because the stamps are spoiled due to the cancellation, annulment and rescission of the instruments relating to the said land;

(vii) that the application for the relief/refund of the stamp duties was made within 24 months from the date of the instruments, which is allowable under s. 57 proviso (a) of the Stamp Act 1949 read together with Finance Act 2021;

(viii) however, the respondent has, on 30 June 2023, decided to disallow the refund of the stamp duties of spoiled stamps on the basis that the Finance Act 2021 only applied to instruments made after 1 January 2022;

(ix) that it is irrational and unreasonable for the respondent not to refund the stamp duties of spoiled stamps when the Finance Act 2021 has enlarged the time for relief from 12 months to 24 months as the purpose of relieving the hardship caused by the pandemic;

(x) that by the respondent rejecting the refund of the stamp duties, the respondent is contradicting the spirit and intention of the Finance Act 2021 when the intention and purpose was to allow relief of hardship caused during the pandemic; and

(xi) it could only be inferred from the respondent's arbitrary decision that the respondent has completely misread and misapplied the Finance Act 2021 when the very intention of the Parliament under the Finance Act 2021 was to provide relief of hardship caused during the pandemic.

Legal Framework On Judicial Review

Duty Of The Court In A Judicial Review Application

[14] A court hearing a judicial review application acts in a supervisory capacity. The court does not perform an appellate function in reviewing the findings of an inferior tribunal, governmental authority or any other entity discharging a public function. In exercising its supervisory jurisdiction, the court is required to confine its enquiry to whether any errors of law had been committed, disproportionate measures imposed or whether there were many flaws in procedure in the impugned process (*Chapter 3 The Supervisory Jurisdiction of the Court in General: The Law and Practice of Judicial Review in Malaysia* by Gregory Das].

[15] In *R v. Panel On Take-Overs And Mergers, Ex Parte Datafin Plc* [1987] QB 815, the English Court of Appeal observed that "an application for judicial review is not an appeal. The panel, and not the court, is the body charged with the duty of evaluating the evidence and finding the facts. The role of the court is wholly different. It is, in an appropriate case, to review the decision of the panel and to consider whether there has been 'illegality', ... 'irrationality', ... or 'procedural impropriety'".

[16] It is a trite law that judicial review is a court proceeding to challenge the legality of the decision-making process by a public authority. Further, the court sitting in a judicial review application is exercising its supervisory jurisdiction and is not to examine the merits of the application. In the case of *Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor* [2017] 2 CLJ 1; [2017] 1 MLJ 563, Suriyadi FCJ held:

[69] A judicial review is a court proceeding where a challenge is made on the decision of the relevant authority or entity ('the appellant'), *ie*, by challenging the lawfulness of the decision making process. This is trite law. Generally, the Court dealing with the judicial review application in a supervisory capacity is not to delve into the merit of the case. In other words the evidence is not reassessed. The Court is merely to quash the decision of the relevant authority, if need be, and not to substitute with what it thinks is the correct decision. We are not here to usurp the powers of the designated authority.

[70] Lord Brightman in *Chief Constable of North Wales Police v. Evans* (1982) 1 WLR 1155 at page 1174 had occasion to state that a judicial review "is not an appeal from the decision but a review of the manner in which a decision is made." The Book authored by Mr Michael Supperstone QC and Mr James Goudie QC in *Judicial Review* at p 72, was also referred and reads:

> It is easy to understand why this is so. The paradigm case of *Judicial Review* challenge arises where a body whose functions are conferred by statute are said to have acted in a manner in which the law does not allow. But if the only complaint is that the body has reached a decision unfavourable to the Applicant on the facts, and the claim is put forward is a plea to the Court in effect to substitute a different decision, the proceedings would amount to an invitation to the Court to exercise the very function which statute had confided to the body reviewed; to accede to such an invitation would be to usurp the will of Parliament. Since of course, the Parliament includes the elected element of the legislature, any such stance by the Court might reasonably be castigated as undemocratic ... .

[17] The scope of the enquiry by the court in acting in accordance with its supervisory jurisdiction is confined to the heads of challenge established by the House of Lords decision in *Council Of Civil Service Unions v. Minister For The Civil Service* [1985] AC 374 ('*CCSU*'). This entails a review on the grounds of illegality, irrationality, procedural impropriety and proportionality.

[18] The Supreme Court in the case of *Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 identified three main grounds from the *CCSU*'s case as follows:

> Applying the principles enunciated by Lord Diplock in *Council of Civil Service Unions v. Minister of Civil Service*, there are 3 grounds upon which administrative action is subject to judicial review. They are:
>
> (i) "illegality" – the decision maker must understand correctly the law that regulates his discretion making power and must give effect to it;

A (ii) "irrationality" – decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it;

(iii) "procedural impropriety" – rather than failure to observe basic rules
B of natural justice or failure to act with procedural unfairness towards the person who will be effected by the decision – this is because susceptibility to judicial review under this head covers also failure by the administrative tribunal to observe procedural rules expressly laid down in the legislative instrument by which its jurisdiction is conferred even where the failure does not involve any denial of
C natural justice.

(see also *Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal* [2019] 4 CLJ 561).

Amendment Of The Stamp Act 1949 And The Finance Act 2021

D **[19]** To determine and resolve the issue before this court, the provisions of the relevant laws under the Stamp Act 1949 and the Finance Act 2021 are referred accordingly.

The Finance Act 2021 [Act 833]

E **[20]** By virtue of s. 40 of the Finance Act 2021 (Act 833), the Stamp Act 1949 was amended as follows:

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

F 36. This Chapter comes into operation on **1 January 2022.**

...

40. Paragraph (a) of the proviso to section 57 of the principal Act is amended by substituting for the words "twelve months" wherever appearing the words "twenty-four months".

G (emphasis added)

Effect Of The Amendment

[21] Prior to the said amendment, the period prescribed under proviso (a) of s. 57 of the Stamp Act 1947 was 12 months.

H **[22]** Subsequent to the amendment to the said proviso (a), the period was amended and substituted to 24 months.

Commencement Date Of The Amendment

[23] Section 40 of the Finance Act 2021 (Act 833) that amends proviso (a)
I of s. 57 of the Stamp Act was gazetted on 31 December 2021. The date for coming into operation of the amendment was fixed on 1 January 2022 by virtue of s. 36 of the Finance Act 2021.

Contentions Of The Parties

The Applicants

[24] The applicants contend that the decision of rejection by the respondent is irrational, illogical, *ultra vires*, in excess of the respondent's authority, unreasonable, goes against the doctrine of legitimate expectation and made without consideration of the object and purpose of the amendment under s. 40 of the Finance Act 2021, which came into operation on 1 January 2022 to extend time for relief of spoiled stamps under s. 57 of the Act from the period of 12 months to 24 months, which Parliament was trying to cure.

[25] Given that the respondent has only provided the ground of rejection on 30 June 2023, it was submitted that under O. 53 r. 3(6) of the Rules of Court 2012 (ROC 2012), the time for judicial review only starts to run on this date where the grounds of application first arose.

[26] The contention of the respondent that time for the judicial review starts to run from the time of "non-approval", *ie*, 10 March 2023, 14 March 2023 and 15 March 2023, was misguided and misdirected because the non-approval was automatic computer system generated without giving any specific ground where it merely stated the followings:

> *Dokumen dan alasan yang dikemukakan tidak memenuhi syarat-syarat atau tidak termasuk dalam mana-mana hal keadaan sebagaimana yang ditetapkan di bawah Seksyen 21(7), 57, 58 dan 80(3) Akta Setem 1949.*
>
> (emphasis added)

[27] The applicants' application for the refund of the spoiled stamps was made as follows:

(i) on Friday 10 March 2023 made the first batch of the application for refund of the duties paid under spoiled stamps. However, on Monday, 13 March 2023, the system automatically generated a non-acceptance response to the application.

(ii) the applicants then proceeded with the second batch of the application for refund of the duties paid under spoiled stamps on 14 March 2023 and on 15 March 2023, the applicants proceeded with the third batch of the application for refund of the duties paid under spoiled stamps.

[28] Further, the conduct of the LHDN Kuching Branch in writing to the LHDN KL clearly inferred that the non-approval by the computer system is not final and that they have made a request to LHDN KL for further deliberation thus there is no finality of the decision yet.

[29] Therefore, the applicants submit that it can be safe to say that the finality of the decision only came through the email of Sri Hastikha Hassan on 30 June 2023, which conveyed the respondent's decision to reject the application for relief together with the ground of rejection.

Respondent's Contention

[30] The respondent submits that the applicants' application should be dismissed with cost on the following grounds:

(i) the decision of the respondent is correct based on the application of proviso (a) of s. 57 of the Stamp Act 1949.

(ii) the application of the amendments to proviso (a) of s. 57 operated prospectively and not retrospectively.

(iii) the application for this judicial review was filed out of time and not in accordance with the Rules of Court 2012.

[31] Based on the dates of applications for relief of spoiled stamps, the application was lodged with the respondent through the system (STAMPS) on 10 March 2023, 14 March 2023, and 15 March 2023.

[32] The applicants argued that the taxpayer only annulled the agreements in 2023 when the new law came into force. However, the respondent replied that the time for refund of spoiled stamps starts running from the date of memorandum of transfer and not from the date of the rescind or the annulment of the agreement. It was submitted that in this case, the applicants are clearly out of time to apply for refund.

[33] The respondent argued that the Collector has made the correct decision to reject the refund of the spoiled stamps on the basis that the 24-month period under the Finance Act 2021 only applies to instruments made after 1 January 2022. The respondent decides that since the applicants' instruments were dated 30 April 2021, therefore, the new time limit of 24 months which comes into effect on 1 January 2022, is not applicable to the applicant's application for relief of the spoiled stamps.

[34] The respondent is relying on several provisions of the Stamp Act 1949 to support their decision to reject the application for relief for the spoiled stamps such as ss. 21(7), 57, 58 and 80(3) of the Act. Thus, the respondent decides that the applicants' application is out of the time allowed under proviso (a) of s. 57 of the Stamp Act 1949 (12 months) and is, therefore time-barred.

Issues For Determination

[35] Based on the submissions of the parties, this court is of the view that the issues to be determined are:

(i) whether the amended provision to proviso (a) of s. 57 of the Stamp Act 1949 applies in the applicants' case.

(ii) whether the respondent's decision is illegal, irrational and/or unreasonable in rejecting the applicants' application for refund of the spoiled stamp.

Finding Of The Court

[36] Under O. 53 r. 3(6) of the Rules of Court 2012, an application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose or when the decision is first communicated to the applicants.

[37] Leave to apply for judicial review has been granted on 30 October 2023. This court have considered the preliminary issue raised whether the application for judicial review was filed within or outside the time limit of three months as required under O. 53 r. 3(6) of the ROC 2012. This court believes that the said issue has been considered by the learned High Court Judge at the leave stage before leave was granted. The Attorney General Chambers (AGC) through their letter to the court dated 7 October 2023 did not object to the leave application (see encl. 4). Hence, there should be no issue regarding the compliance with O. 53 r. 3(6) of the ROC 2012 and this court therefore proceeded to determine the substantive application and the reliefs sought by the applicants.

[38] This court has considered the applicants' application, the written submission filed by both parties, and the oral arguments advanced in this court with regard to the substantive application.

[39] It is pertinent to determine whether the stamps in this case are spoiled stamps. Under s. 57(f) of the Stamp Act 1949, a stamp is deemed spoiled as follows:

> 57(f) the stamp used for any of the following instruments:
>
> (i) an instrument executed by any party thereto, but afterwards found to be absolutely void from the very beginning;
>
> (ii) ...
>
> (iii) ...
>
> (iv) ...
>
> (v) ...
>
> (vi) in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed.

[40] In this application, this court found that the stamps are deemed spoiled under s. 57(f)(vi) of the Stamp Act 1949, where the instruments were mutually cancelled, annulled, rescinded or is otherwise not performed by virtue of the deed of mutual rescission entered by the applicants on 30 January 2023.

[41] The sale and purchase agreements between the applicants (buyer and seller) in respect of the lands were entered on 30 April 2021. The memorandum of transfer were all dated 20 May 2021. Both instruments are valid at that material dates.

[42] The applicants have paid to the respondent between May to November 2021 a sum of RM156,620, being the stamp duties in respect of the sale and purchase of the said land. However, the sale was not materialised due to COVID-19 pandemic at that material time and the agreements were mutually rescinded by the applicants.

[43] Based on the statement and affidavits evidence, the applicants' applications for the refund of the spoiled stamps were made on Friday 10 March 2023, made the first batch of the application for refund of the duties paid under spoilt stamps. However, on Monday 13 March 2023, the system automatically generated a non-acceptance response to the application. The respondent's answer is reproduced as follows:

Tuan,

BAYARAN BALIK DUTI SETEM

Jenis Surat Cara: Memorandum of Transfer

Saya dengan hormatnya merujuk kepada permohohan tuan bertarikh 10/03/2023.

Dukacita dimaklumkan permohonan tuan tidak diluluskan kerana:

Dokumen dan alasan yang dikemukakan tidak memenuhi syarat-syarat atau tidak termasuk dalam mana-mana hal keadaan sebagaimana yang ditetapkan di bawah Seksyen 21(7). 57, 58 dan 80(3) Akta Setem 1949.

Sekian terima kasih

"BERKHIDMAT UNTUK NEGARA"

"PEMUNGUT DUTI SETEM LHDNM"

Cetakan ini adalah janaan komputer dan tidak memerlukan tandatangan

"BERSAMA MEMBANGUNKAN NEGARA"

(emphasis added)

[44] Even though the first batch was rejected, the applicants proceeded with the second batch of the application for refund of the stamp duties paid under spoiled stamps on 14 March 2023 and the third batch of the application for refund of the duties paid under spoiled stamps was made on 15 March 2023.

[45] Based on the factual matrix in this application, this court finds that:

(i) the applicants' case fits the circumstances under s. 57(f)(vi) of the Stamp Act 1949, which states:

Allowance for spoiled stamps

57. Subject to any rules which may be made under this Act and to the production of such evidence by statutory declaration or otherwise as the Collector may require, allowance shall be made by the Collector for stamps spoiled in the following cases:

(vi) in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed:

...

Provided as follows:

(a) **that the application for relief is made within twenty-four months after the stamp has been spoiled** or become useless or in the case of an executed instrument after the date of the instrument, or, if it is not dated, within twenty-four months after the execution thereof by the person whom it was first or alone executed or within such further time as the Collector may prescribe in the case of any instrument sent abroad for execution or when from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period;

(emphasis added)

(ii) the application for refund by the applicants has fulfilled the terms and conditions required under proviso (a) of s. 57 of the Stamp Act 1949 as follows:

(a) the applicants have made the application for relief/refund of the stamp duties paid;

(b) the stamps are spoiled stamps upon the rescission of the instruments *vide* the deed of mutual rescission dated 30 January 2023;

(c) the date of coming into effect of the amendment to proviso (a) of s. 57 of the Stamp Act 1949 was on the 1 January 2022, which is well before the stamps are deemed spoiled on 30 January 2023;

(d) therefore, the applications for relief/refund of the spoiled stamps made in March 2023 were within the period of 24 months after the stamps had been spoiled as required under the proviso (a) of s. 57 of the Stamp Act 1949 as amended.

[46] Based on the above proviso (a), the application for a refund can only be made after the stamp is spoiled due to the various circumstances under s. 57(a) until (f) of the Stamp Act 1949.

[47] In this application, the facts show that the instruments relating to the sale and purchase of the land were rescinded by a deed of mutual rescission dated 30 January 2023. Thus, according to s. 57(f)(vi) of the Stamp Act 1949, the stamp is spoiled where in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed.

[48] Instrument is defined in s. 2 of the Stamp Act 1949 to include every written document. As submitted by the counsel for the applicants, the spoiled stamps are refundable after the agreements were rescinded by the deed of mutual rescission.

[49] The stamp is considered spoiled in this case upon the execution of the deed of mutual rescission by the applicants on 30 January 2023 and thereby rendered the instruments pertaining to the sale and purchase of the land rescinded.

[50] Based on the grounds stated for the rejection by the respondent, the applicants' applications are said to fall under the old provision of the proviso (a) of s. 57 of the Stamp Act 1949. Therefore, the application was made out of the time limit of 12 months from the date of the instrument and thus was rejected.

[51] The applicants argued that their application should be treated under the new proviso (a) of s. 57 of the Stamp Act, which allows for the refund of the stamp duty provided that the application for relief is made within 24 months after the stamp has been spoiled or becomes useless or in the case of an executed instrument after the date of the instrument.

[52] The applications for refund of spoiled stamp were filed on 10 March 2023, 14 March 2023 and 15 March 2023, respectively.

[53] Based on the dates above, the applications were made after the coming into force of the new proviso (a) of s. 57 of the Stamp Act 1949.

[54] These applications were for the purpose of refund of the spoiled stamps pursuant to the rescission of the sale and purchase agreement by the deed of mutual rescission dated 23 January 2023.

[55] In this case, at the time of entering the sale and purchase agreement, the agreements are perfectly valid and the parties have all the intention to fulfil the terms of the agreements.

[56] The agreements were entered into during COVID-19 pandemic in 2021. It was subsequently that the applicants (buyer) found difficulty in fulfilling the terms and the parties negotiated and were still unable to come out with money. On 30 January 2023, that was after the amendment to proviso (a) of s. 57 of the Stamp Act 1949 came into effect, the parties

entered into a mutual rescission of the agreements. The deed of mutual rescission was entered dated 23 January 2023. This is where the stamp is deemed to be spoiled under the condition mentioned in s. 57(f)(vi) of the Stamp Act 1949.

[57] Counsel for applicants submitted, at that point in time when the sale and purchase agreements were entered, it was good and valid agreements. There is no basis for the applicants to ask for a refund. When the amendment came into force, the respondent, based on the pre-amended provision, had rejected the refund. The applicants contend that it is wrong because the correct law to be applied is post-amendment which entitles them to 24 months.

[58] Given the finding that the application for refund falls under the amended provision of proviso (a) of s. 57 of the Stamp Act, this court is of the considered view that there is no issue of whether proviso (a) should be given a prospective or retrospective effect.

[59] The application was made after the coming into effect of the amendment to proviso (a), which had extended the period for application for relief from 12 months to 24 months after the stamp has been spoiled or becomes useless or, in the case of an executed instrument, after the date of the instrument.

Decision

[60] Having considered the grounds of the application and the written submissions filed by the counsel for the applicants and the respondent, this court is of the considered view that the decision by the respondent in rejecting the application for refund of the spoiled stamp is grounded on the wrong application of the law applicable and enforceable at that material time.

[61] Based on the facts available before this court, the stamps are spoiled stamps under s. 57(f)(vi) of the Stamp Act 1949 when the parties decided to rescind the instruments in respect of the sale and purchase of the land by entering a deed of mutual rescission dated 23 January 2023.

[62] The respondent is duty-bound under s. 57(f) of the Stamp Act 1949 to refund the spoiled stamps provided that the application for the refund fulfilled the condition stated in the said s. 57 of the Act. This is evident from the words "allowance shall be made by the Collector for stamps spoiled in the following cases: ....

[63] Based on s. 57 of the Act, the spoiled stamp shall be refunded if:

(i) the stamp is a spoiled stamp under s. 57(f)(i) to (vi) of the Act;

(ii) the application is made within the time limit stipulated in proviso (a) of s. 57 (pre-amendment is 12 months and post-amendment is 24 months).

[64] The applicants' case here falls under s. 57(f)(vi) of the Stamp Act 1949, which states:

> allowance shall be made by the Collector for stamps spoiled in the following cases:
>
> (vi) in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed.

Thus, in my considered view, the applicants are entitled to be refunded for all the stamps spoiled after the instruments were rescinded through the deed of mutual rescission dated 23 January 2023.

[65] The respondent argued that the Collector has made the correct decision to reject the refund of the spoiled stamps on the basis that the Finance Act 2021 only applies to instruments made after 1 January 2022. The respondent decides that since the MOT was dated 20 May 2021, the new time limit of 24 months, which came into effect on 1 January 2022, does not apply to the applicants' application for relief of the spoiled stamps.

[66] The respondent decides that the applicants' application is out of the time allowed under proviso (a) of s. 57 of the Stamp Act 1949 (12 months) and is, therefore, time-barred.

[67] Based on the dates of applications for relief of spoiled stamps, the applications were lodged with the respondent through the system (STAMPS) on 10 March 2021, 14 March 2021, and 15 March 2021.

[68] Through this judicial review, the applicants are applying for the reliefs, among others, an order of declaration that the time for application for relief for the spoiled stamps under Table A is within 24 months from the date of their respective instruments pursuant to proviso (a) of s. 57 of the Stamp Act 1949 reading together with Finance Act 2021.

[69] The applicants submit that the decision of the respondent is irrational, illogical, *ultra vires*, in excess of the respondent's authority, unreasonable, goes against the doctrine of legitimate expectation and is made without consideration of the object and purpose of the amendment under s. 40 of Finance Act 2021, which came into operation on 1 January 2022 to extend time for relief of spoiled stamps under s. 57 of the Act from the period of 12 months to 24 months which Parliament was trying to cure.

[70] In the present case, the facts are different from the case of *OSM Marketing (KK) Sdn Bhd v. The Collector Of Stamp Duties, Malaysia* [2024] 6 CLJ 920; [2023] MLJU 3258, which I have decided earlier and is on appeal to the Court of Appeal.

[71] This court agrees with the applicants' counsel that in *OSM Marketing*'s case (*supra*), the sale and purchase agreement was void from the very beginning. Therefore, the stamp is deemed spoiled on the date of the agreement found to be void from the beginning (s. 57(f)(i) of the Stamp Act 1949). In *OSM Marketing*'s case (*supra*), the applicant concedes that at the time of filing his application, the applicant was already out of time given the provision of proviso (a) of s. 57 of the Stamp Act 1949 before the amendment. Therefore, the applicant urged the court to decide that the new amendment to proviso (a) of s. 57 of the Stamp Act should be read retrospectively. In that particular case, the time for them to claim back the stamp duty would be the time they entered into a sale and purchase agreement because the agreement was already void.

[72] However, in the present case, there is a vital difference. At the time of entering the sale and purchase agreement, the agreements are perfectly valid. It was subsequently that the buyer was unable to fulfil the terms and parties negotiated and it was on 30 January 2023, that was after the amendment came into effect, that the parties entered into a deed of mutual rescission.

[73] In my considered view, the applicants' application for the refund has met the condition stipulated under s. 57 proviso (a), where the application was made within 24 months after the stamp is spoiled under sub-para. (f)(vi) of s. 57 of the Stamp Act 1949.

Conclusion

[74] Thus, it is concluded that the respondent, when deciding to reject the application, has not rightly considered the fact that the spoiled stamp occurred after the coming into force of the new proviso (a) of s. 57, *ie*, at the date the instruments were rescinded on 30 January 2023. Thus, the respondent has come to the wrong finding and ground for rejecting the applicants' applications for refund of the spoiled stamp under s. 57(f)(vi) read with proviso (a) of the Stamp Act 1949 and s. 40 of the Finance Act 2021 (Act 833).

[75] Based on the findings and reasons aforesaid, this court is of the considered view that the applicants are entitled to the refund of the stamp duties spoiled upon the rescission of the instruments after the coming into force of proviso (a) to s. 57 of the Stamp Act 1949 as amended by the Finance Act 2021.

[76] Given the above, the applicant's judicial review application for reliefs sought as in paras. 2(i), (ii), (iii) and (iv) of the statement is allowed with no order as to costs.